

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHARLES DEAN VIOX,

Plaintiff,

v.

NANCY PORTER et al.,

Defendants.

Case No. 3:14-cv-00357-MMD-WGC

ORDER

I. DISCUSSION

On October 20, 2014, this Court entered a screening order and dismissed the complaint in its entirety with respect to the allegations challenging Plaintiff's conviction, appeal, and habeas proceedings pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994). (Dkt. no. 8 at 4-5.) The Court granted Plaintiff leave to amend his complaint with respect to the allegations related to his incarceration at the Northern Nevada Correctional Center ("NNCC"). (*Id.* at 5.) The Court directed Plaintiff to file an amended complaint within thirty (30) days of the date of that order and stated that, if Plaintiff failed to file an amended complaint regarding his conditions of confinement, the Court would dismiss the action without prejudice. (*Id.*)

On October 22, 2014, Plaintiff filed a motion for clarification and requested that this Court serve the 18 defendants listed in his complaint. (Dkt. no. 10 at 1.) On October 27, 2014, the Court denied the motion because Plaintiff had not stated a cognizable claim in his complaint. (Dkt. no. 11 at 1.) The Court stated that, if and when Plaintiff stated a cognizable claim, the Court would order service on Defendants when procedurally applicable to do so. (*Id.*)

1 On October 29, 2014, Plaintiff filed a notice of appeal as to the screening order.
2 (Dkt. no. 12.) On November 13, 2014, the Ninth Circuit Court of Appeals dismissed the
3 appeal for lack of jurisdiction because the screening order was not final or appealable.
4 (Dkt. no. 15 at 1.)

5 On November 17, 2014, Plaintiff filed a motion for this judge to recuse herself.
6 (Dkt. no. 16 at 1.) Plaintiff alleges that this judge is in collusion with Defendants in this
7 case because “clearly and without a doubt” his complaint states cognizable claims. (*Id.*)
8 Plaintiff also directs this judge to include herself as one of the defendants. (*Id.*) Plaintiff
9 states that this Court has not set a jury trial and deferred his application to proceed *in*
10 *forma pauperis* for no obvious reason. (*Id.* at 2.) Plaintiff attempts to explain why his
11 claims have merit. (*Id.* at 3-5.)

12 Pursuant to 28 U.S.C. § 455, “any justice, judge, or magistrate judge of the
13 United States shall disqualify himself in any proceeding in which his impartiality might
14 reasonably be questioned.” 28 U.S.C. § 455(a). This judge declines to recuse herself
15 from this matter because there is nothing in this case to demonstrate that her
16 impartiality might be reasonably questioned. This judge dismissed Plaintiff’s claims
17 challenging his conviction, appeal, and habeas proceedings pursuant to United States
18 Supreme Court law. See *Heck v. Humphrey*, 512 U.S. 477 (1994). This judge also
19 granted Plaintiff leave to file an amended complaint with respect to his conditions of
20 confinement claim in order to give Plaintiff an opportunity to state a cognizable claim.
21 Additionally, although Plaintiff wants to add this judge as a defendant to this case, he
22 has not done so yet, because he has not filed an amended complaint naming her as a
23 defendant.

24 Plaintiff shall file his amended complaint within thirty (30) days from the date of
25 entry of this order. If Plaintiff fails to file an amended complaint about his conditions of
26 confinement, this action shall be dismissed without prejudice.

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